

Order of Dismissal
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1 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

2 To state a claim under 42 U.S.C. § 1983, Plaintiff must allege two essential elements: (1)
3 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
4 alleged violation was committed by a person acting under the color of state law. *See West v.*
5 *Atkins*, 487 U.S. 42, 48 (1988).

6 B. Plaintiff's Claim

7 According to the amended complaint, on February 5, 2009, Plaintiff was sent to the
8 medical clinic for physical therapy as part of his treatment from a recent knee surgery. He was
9 instructed by the medical staff to sit and wait on the bench in front of the clinic because the
10 clinic was too full. After ten minutes, the bench collapsed and Plaintiff and several other
11 inmates who were sitting on the bench fell. Plaintiff experienced great pain in his knee and
12 lower back. He was instructed to "stay down and was assisted into a wheelchair and taken for
13 immediate medical attention." Plaintiff alleges that the bench was improperly fastened to the
14 wall and had fallen before. Plaintiff further alleges that the staff knew about the bench's
15 dangerous condition when they instructed Plaintiff to sit on it.

16 The Constitution does not mandate comfortable prisons, but neither does it permit
17 inhumane ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The conditions under which
18 a prisoner is confined are subject to scrutiny under the Eighth Amendment. *See Helling v.*
19 *McKinney*, 509 U.S. 25, 31 (1993). A prison official violates the Eighth Amendment when two
20 requirements are met: (1) the deprivation alleged must be, objectively, sufficiently serious,
21 *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison
22 official possesses a sufficiently culpable state of mind, *Farmer*, 511 U.S. at 834 (citing *Wilson*,
23 501 U.S. at 297). In determining whether a deprivation of a basic necessity is sufficiently
24 serious to satisfy the objective component of an Eighth Amendment claim, a court must consider
25 the circumstances, nature, and duration of the deprivation. The more basic the need, the shorter
26 the time it can be withheld. *See Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). However,
27 neither negligence nor gross negligence is actionable under § 1983 in the prison context. *See*
28 *Farmer*, 511 U.S. 825 at 835-36 & n.4.

1 Here, Plaintiff fails to state a cognizable claim upon which relief may be granted.
2 Liberally construed, Plaintiff's allegation does not meet the objective test of being sufficiently
3 serious to rise to the level of an Eighth Amendment claim. Although the Eighth Amendment
4 protects against cruel and unusual punishment, this does not mean that federal courts can or
5 should interfere whenever prisoners are inconvenienced or suffer de minimis injuries. *See, e.g.,*
6 *DeMallory v. Cullen*, 855 F.2d 442, 444 (7th Cir. 1988) (correctional officer spitting upon
7 prisoner does not rise to level of constitutional violation); *Holloway v. Gunnell*, 685 F.2d 150
8 (5th Cir. 1985) (no claim stated where prisoner forced to spend two days in hot dirty cell with no
9 water); *Miles v. Konvalenka*, 791 F. Supp. 212 (N.D. Ill. 1992) (single instance of finding mouse
10 in food not actionable); *Vaga v. Parsley*, 700 F. Supp. 879 (W.D. Tex. 1988) (burned out light
11 bulb, promptly replaced, does not violate Eighth Amendment); *Evans v. Fogg*, 466 F. Supp. 949
12 (S.D.N.Y. 1979) (no claim stated by prisoner confined for 24 hours in refuse strewn cell and for
13 two days in flooded cell). Federal courts instead should avoid enmeshing themselves in the
14 minutiae of prison operations in the name of the Eighth Amendment. *See Wright v. Rushen*, 642
15 F.2d 1129, 1132 (9th Cir. 1981).

16 Though district courts must afford pro se prisoner litigants an opportunity to amend to
17 correct any deficiency in their complaints, *see Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
18 2000) (en banc), a pro se complaint "may be dismissed for failure to state a claim only where it
19 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
20 would entitle him to relief." *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (citations
21 and internal quotations omitted). Here, even liberally construed, under the circumstances
22 alleged, Plaintiff has not alleged facts sufficient to entitle him to relief for a civil rights violation.
23 As a result, the Court concludes that leave to amend would be futile.

24 Accordingly, this claim is DISMISSED for failure to state a claim. The Clerk shall close
25 the file.

26 IT IS SO ORDERED.

27 DATED: 12/17/2010

28 
LUCY H. KOH
United States District Judge